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No. 375

In the Supreme Court of the United States

OCTOBER TERM, 1923

UNITED STATES OF AMERICA, *petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENT

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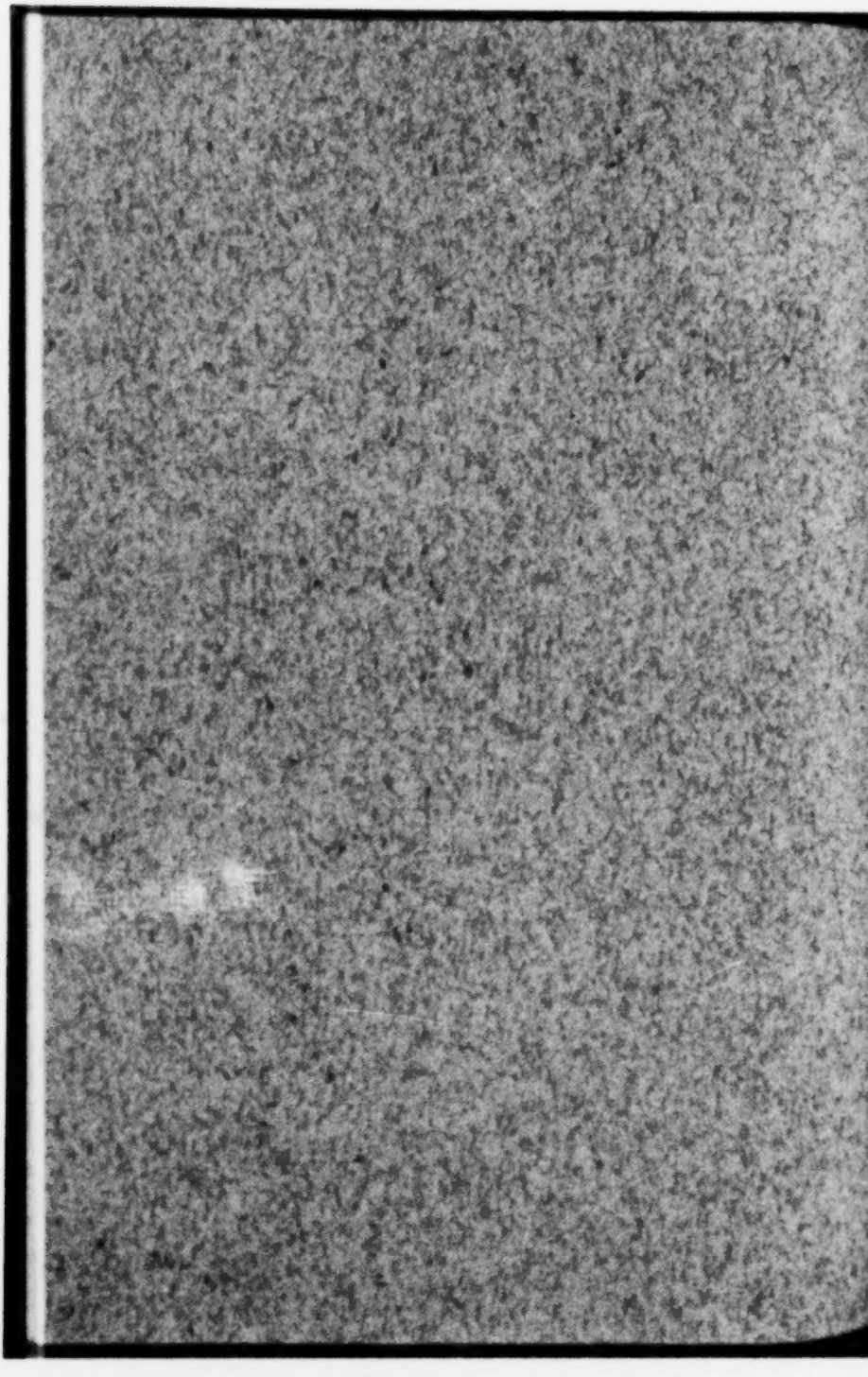

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STATEMENT OF CASE

This is a writ of certiorari to the Court of Appeals of the District of Columbia to review an order (R 321) of that Court of May 18, 1928, denying motion (R. 317) of the United States of April 24, 1928, asking that Court to vacate its decree (R. 315) of June 2, 1924, and mandate (R. 315-317) of June 20, 1924, reversing an order (R. 304) of the Supreme Court of the District of Columbia of May 8, 1923, denying the motion (R. 147) of the California Cooperative Canneries for leave to intervene in the suit of the *United States v. Swift & Company*, and others, Equity No. 37623 (see 276 U. S. 311).

The Government's motion to vacate was not filed until about four years after the Court of Appeals had finally disposed of the Canneries appeal, and was based solely upon a suggestion of want of jurisdiction over that appeal. No appeal was taken from the decree of reversal. The opinion of the Court of Appeals appears in 55 App. D. C. 36, and in 299 Fed. 914. It also appears in this record (R. 308-314).

February 27, 1920, the United States, as complainant, in the Supreme Court of the District of Columbia, filed a suit in equity No. 37623, under the anti-trust laws, against Swift & Company, Armour & Company, Morris & Company, Wilson & Company, Cudahy Packing Company, and others, alleging violation of such laws, and praying for injunction (R. 1-17). On the same date, by consent, a final decree (R. 118-129) was entered against the defendants, reserving jurisdiction of the cause (R. 129, top). After various unsuccessful efforts on the part of the California Cooperative Canneries to get the Government to ask the court to vacate or modify the decree, the Canneries, on April 19, 1922, filed its motion (R. 147) for leave to intervene. By order (R. 304) of May 8, 1923, this motion was denied, and the Canneries appealed to the Court of Appeals of the District of Columbia. The appeal was heard by that Court without any suggestion on the part of the Government or any other appellee as to want of jurisdiction, and on June 2, 1924, that Court reversed the order appealed (R. 315) and the mandate (R. 315-317) went down on June 20, 1924.

QUESTION PRESENTED

The sole question presented to this Court is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from an order of the Supreme Court of the District of Columbia denying the motion of the California Cooperative Canneries for leave to intervene in a suit in equity filed by the United States under the anti-trust laws.

APPEAL WAS WITHIN JURISDICTION OF COURT OF APPEALS

The jurisdiction of the Court of Appeals is defined by Section 226 of the Code of Law for the District of Columbia, which reads as follows:

> Any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the Court of Appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the Supreme Court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and *also from any other interlocutory order, in the discretion of the said court of appeals*, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

The Court of Appeals therefore has jurisdiction over (1) any final order, judgment, or decree, (2) all interlocutory orders whereby the possession of property is changed or affected, and (3) any other interlocutory order, in the court's discretion, when it will be in the interest of justice to allow such appeal. (In practice, such appeal (3) is called a special appeal. Criminal cases are now excluded.)

We contend that the order appealed, denying leave to the Canneries to intervene, was final only as to its right to intervene in the suit in equity "wherein the United States is complainant," and Swift & Co. and others are defendants; and an appeal from such order was within the jurisdiction of the Court of Appeals of the District of Columbia under Sec. 226 of the Code, *supra*.

In *Gilbert* v. *Endowment Association*, 10 App. D. C. 316, the Court of Appeals entertained an appeal from a decree of the Supreme Court of the District of Columbia that was thought to be final. Subsequently, however, this Court held that the decree was not final (*Gilbert* v. *Washington Beneficial Endowment Association*, 173 U. S. 701; 43 L. Ed. 1185), and when the mandate of this Court was received by the Court of Appeals, a motion was made to vacate its decree, but was overruled in *Gilbert* v. *Endowment Association*, 15 App. D. C. 40, in which that Court said (41-42):

> The appellate jurisdiction of this court has not the same limitations as that of the Supreme Court of the United States. The right of review of the latter is limited to the final judgments and decrees of the subordinate tribunals; the jurisdiction of the Court of Appeals of the District of Columbia with reference to the Supreme Court of

> this District is very much broader; for it extends to various interlocutory orders and decrees specifically, and to any and all interlocutory orders from which this court upon petition might allow an appeal. Whether the decree of the Supreme Court of the District in this cause from which the appeal to this Court was taken is contained in the classes of interlocutory orders specifically enumerated, it is unnecessary to determine; since we are of the opinion that, even if the decree appealed from was merely interlocutory and not final, the hearing of the cause by this court as upon a final decree was the equivalent of the allowance of an appeal upon the theory that the decree was only of an interlocutory character.

It is therefore plain that the Court of Appeals had jurisdiction of the Canneries appeal from the order of the lower court denying the motion for leave to intervene, unless its jurisdiction had perished under some other law in force when that Court entertained the appeal.

APPEAL WAS NOT FROM FINAL DECREE IN SUIT IN WHICH UNITED STATES WAS COMPLAINANT, BUT FROM AN ORDER DENYING LEAVE TO A THIRD PARTY TO INTERVENE IN A SUIT IN WHICH UNITED STATES WAS COMPLAINANT

The Government contends that an appeal from an order denying leave to a third party (a stranger to the record) to intervene and become a party to an anti-trust case, in which the United States is complainant, is appealable only to the Supreme Court under the Expediting Act; that therefore the Court of Ap-

peals of the District of Columbia had no jurisdiction of the Canneries appeal and its mandate is void.

The Expediting Act of February 11, 1903 (32 St. L. 823), as amended by the Act of June 29, 1910 (36 St. L. 854), provides:

> "That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposi-

tion of said cause, or in the event that a majority of said judges shall be unable to agree upon the *judgment, order, or decree finally disposing of said case* in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the district court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof * * *.

Section 2 of the Act reads as follows:

"Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from *the final decree* of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a *final decree* therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law."

The Expediting Act therefore requires that the decree, to support a direct appeal to this court, (1) must be in a suit under the anti trust laws, (2) must be in a

suit in which the United States is the complainant, and (3) must be final.

Section 1 of the Act speaks of "the judgment, order, or decree finally disposing of" the case, and Section 2 defines such decree as "the final decree" of the Circuit, now District Court. The Government, accordingly, must establish that the order of the Supreme Court of the District of Columbia, denying the Canneries' motion for leave to intervene, met all of these requirements of the Expediting Act. We do not think that the order met any of them.

The Government's contention is based upon a misconception of what the Canneries appeal involved. It was not an appeal from the consent decree in the suit of the *United States v. Swift & Company*. Had it been so, it would have been dismissed by the Court, because the Canneries was not a party to that suit or that decree. The appeal was from the order denying its motion for leave to intervene in that suit, wherein the United States was the complainant and Swift & Company and others were the defendants. For the purpose of the appeal, the order was sufficiently final as to the Canneries to sustain the appeal to the Court of Appeals under Section 226 of the Code, *supra*, but not to sustain a direct appeal to this Court under the Expediting Act.

In *Voorhees v. Indianapolis Car and Manufacturing Co.*, 140 Ind. 220; 39 N. E. 738, the Court said:

> The errors assigned here are (1) that the superior court, in general term, erred in overruling the motion to dismiss the appeal to the general term; (2) in overruling the application and motion of appellant to be permitted to introduce evidence in support of his plea in the nature of a plea *puis darrein* continuance, and in declining to hear evidence in support of said plea, and refus-

ing to rule upon said plea; and (3) in reversing the order and judgment of the court in special term.

In support of the first specification, it is contended that the order appealed from was neither a final judgment nor such an interlocutory order as that an appeal is authorized therefrom. The only interlocutory orders from which an appeal is authorized by the statute generally are: First, for the payment of money to compel the execution of any instrument of writing, or the delivery or assignment of any securities, evidences of debt, documents, or things in action; second, for the delivery of the possession of real property or the sale thereof; third, granting or dissolving, or overruling motions to dissolve, an injunction in term, and granting an injunction in vacation; and, fourth, orders and judgments upon writs of habeas corpus made in term or vacation. Burns' Rev. St. 1894, Sec. 658 (Rev. St. 1881, Sec. 646.) The order in question was not an interlocutory one, within the meaning of these provisions; and, if it was an interlocutory order at all, we know of no other provision of law authorizing an appeal from it. An interlocutory order appointing, or refusing to appoint, a receiver, may be appealed from within 10 days thereafter. 1 Burns' Rev. St. 1894, Sec. 1245 (Rev. St. 1881, Sec. 1231). But this is not such an order. In all other cases an appeal lies generally only from a final judgment. Burns' Rev. St. 1894, Sec. 644 (Rev. St. 1881, Sec. 632). A final judgment, within the meaning of this section, is defined to be such a judgment or order as makes a final disposition of the case. *Covey v. Neff*, 63 Ind. 392; *Hill v. Shannon*, 68 Ind. 470; *Matter v. Campbell*, 71 Ind. 512; *Reese v. Beck*, 9 Ind. 238; *Davis v. Davis*, 36 Ind. 160; *Northcutt v. Buckles*, 60 Ind. 577; *Taylor v. Board*, 120 Ind. 121, 22 N. E. 108; *Champ v. Kenerick*, 130 Ind. 545, 30 N. E., 635; *Thomas v.*

Railway Co. (Ind. Sup.) 39 N. E. 44, and authorities cited; *Elliott, App. Proc.*, Sections 83-85, and authorities cited.

It is objected to the right of appeal from the order denying the petition that such petitioner, the rolling mill, was not a party to the action of Voorhees and the appointment of the receiver, because the court had refused to make it such in the denial of the petition, and hence, being a stranger to the record, it could not appeal. But this contention is based on a misconception of what it is that the Rolling Mill was appealing from. The record clearly shows that it was not appealing or trying to appeal from Voorhees' judgment against the car company. If it had so appealed, or tried so to appeal, its effort should have been properly met by a dismissal of such appeal or attempted appeal. It also clearly appears that the Rolling Mill was not appealing, or attempting to appeal, from the order appointing the receiver. Such an appeal would have been equally unavailing. But the Rolling Mill was appealing from the action of the special term on its petition asking to be allowed to intervene in the proceedings resulting in the appointment of the receiver for the alleged purpose of better protecting the interests of itself, a creditor of the Car Company, together with all other general creditors of the insolvent Car Company. It can hardly be said that the Car Company was not a party to its own petition of intervention, or that it was not a party to the order of the special term denying its petition. It was a party to the petition and order thereon, within the meaning of the law requiring, as a prerequisite to the right of appeal, that the party invoking such right must be a party to the order or judgment appealed from.

The order or judgment appealed from was one that made a final disposition of the case made by

> the petition. It disposed of all the rights therein sought to be asserted and enforced, not temporarily, but for all time to come. It made an end of those rights. That brings the case within the authorities as to what is such a final judgment as that an appeal may be had therefrom.

On page 9 of its brief, the Government maintains that "a decree denying an application for leave to intervene is final," and in support of this contention seven State cases are cited, but no reference is made to any of the federal cases on the subject. The State cases cited by the Government go no further than to hold that a decree denying an application for leave to intervene is final, for the purpose of appeal, only as to the would-be intervenor but nobody else.

An examination of the Government's brief, and the State cases therein cited, shows that the Government is laboring under the same misapprehension as to the Canneries appeal as was the appellee in the *Voorhees* case. The Government does not quote from the State cases cited, but assumes that the order denying the Canneries motion for leave to intervene was a final decree in the suit in which the United States was complainant. The cases cited by the Government do not show that the order denying leave to intervene was a final decree in the original suit by the Government against the Packers, but, on the contrary, they do show that it was final as to the Canneries, and that the Canneries could appeal therefrom; and they further show that the appeal must be from the order denying intervention, and not from the final decree in the original suit.

In *Stich* v. *Dickinson*, 38 Cal. 608, 609-10 (cited by the Government), the Court says:

The plaintiff, Stich, claims to be the owner of a note and mortgage made by the defendant, Dickinson, to one Jordan, since deceased, and prays for a judgment of foreclosure and sale. The defendant, in his answer, denies that the plaintiff is the owner of the note and mortgage, or that he has any interest therein, and sets up other defenses. Goldner filed an intervention, as administrator of Jordon, in which he denies that Stich has or ever had any title to or interest in the note and mortgage, which he avers belonged to Jordon at the time of his death, and to which the intervenor is entitled as his administrator; and he prays for a foreclosure of the mortgage and a sale of the property for the benefit of Jordon's estate. The defendants demurred to the intervention on the ground, among others, that it does not state facts which entitle the intervenor to intervene, inasmuch as it does not show that the intervenor has any interest in the matter in litigation, in the success of either of the parties, or against both or all of them. The demurrer was sustained and a judgment was thereupon entered against the intervenor, from which judgment he prosecutes this appeal.

The respondents claim that the appeal is premature, there having been no final judgment in the action as between the original parties to it. But this position is not tenable. There has been a final judgment against the intervenor, and no judgment can hereafter be entered as to him. So far as he is concerned, the judgment is final, and ended the litigation in that Court.

In *People* v. *Pfeiffer*, 59 Cal. 89, 90 (cited by the Government), the Court says:

Neither the appellant nor his intestate was a party to the proceedings for the condemnation

of the lands and springs of water thereon, which were commenced for the benefit of the University of California, etc., under an Act of the Legislature entitled * * *. The only relation which either of them had to the proceedings was this: Several weeks after the Commissioner appointed by the Court had appraised the value of the springs and lands described in the complaint and had filed their report, the appellants, as administrators of the estate of Jose Domingo Peralta, deceased, made application for leave to intervene in the proceedings. The court made an *ex parte* order permitting him to present and file a complaint in intervention, but subsequently, after filing the complaint, set aside the order, refused to allow him to intervene, and dismissed his complaint. From the judgment of dismissal the appellant took no appeal, as he might have done (*Stich* v. *Goldner*, 38 Cal. 610); but after the Court had confirmed the report of the valuation by the Commissioners, and entered a judgment of condemnation between the parties to the proceedings, pursuant to the provision of the statute, he prosecuted this appeal from that judgment.

A proceeding to condemn land for a public purpose is a special proceeding, from the final judgment in which an appeal may be taken by any party aggrieved. But a party aggrieved means a party to the action or one prejudiced by the judgment. The appellant was not a party to the action in the Court below, because his suit to be made a party was rejected, nor was he injured by the judgment. And what he claims to have been a final judgment was not a judgment against him. He was neither a party nor privity to it. It did not affect his rights; and he was in no way prejudiced by it.

In *Henry* v. *Travelers Ins. Co.*, 16 Colo. 179, 184 (cited by the Government), the Court says:

> It is insisted that there is no final judgment in this case to which a writ of error will lie. This objection is not tenable. Upon the entry of the judgment or order denying Henry's application to intervene, the cause was finally determined as to him; and unless he be entitled to a writ of error from this court, he is precluded from any review of such judgment.

In *Harmon* v. *Bashydt*, 20 Neb. 625 (cited by the Government), suit was brought to foreclose a mortgage. Harmon filed an application to intervene claiming to be the holder of two of the notes secured by the mortgage. The Court says (p. 630):

> On the 30th of April, 1886, the court overruled the application of Harmon to intervene, to which he excepted, and now brings the cause into this court by petition in error. The attorneys for Bashydt claim that as there is no final order and that a judgment has not been rendered in the action, this proceeding in error is premature. An order in the progress of an action, to be final, must be such as determines the action and prevents a judgment. An order affecting a substantial right, made in a special proceeding, is a final order. * * * So in the case at bar, Harmon had some interest in the goods in question and some right to the possession apparently. The extent of that right is a question for the jury; but sufficient was shown *prima facie* to entitle him to intervene.

The foregoing citations by the Government appear in a comprehensive note in 123 A. S. R. 280-314, on the subject of intervention, reading in part as follows (313-314):

> If the application for leave to intervene is

denied, the order of denial does not terminate the action or proceeding, and in that sense is not final, and it has been hence held not to be subject to appeal under statutes allowing appeals from final judgments only: *Fairthorne* v. *Wigginton*, 11 B. Mon. 368; *Bennett* v. *Whitcomb*, 25 Minn. 148 *Greenwalt* v. *Natrona I. Co.* (Wyo.), 92 Pac. 1008; *Lewis* v. *Baltimore & L. R. Co.*, 62 Fed. 218, 10 C. C. A. 446. The refusal of leave to file a complaint of intervention or the striking it out, or sustaining a demurrer to it after it is filed, though it does not terminate the action or proceeding or dispose of it as between the original parties, does effectually terminate it as to the intervenor or applicant, and, as to him, it is a final judgment or order. He may, therefore, appeal and prosecute a writ of error without waiting for any further disposition of the case; *Stitch* v. *Dickinson*, 38 Cal. 608; *People* v. *Pfeiffer*, 59 Cal. 89; *Henry* v. *Travelers' Ins. Co.*, 16 Col. 179, 26 Pac. 318; *Schlieder* v. *Martinez*, 38 La. Ann. 847; *Harman* v. *Bashydt*, 30 Neb. 236, 46 N. W. 489; *Rollins* v. *Rollins*, 76 N. C. 264; *Loven* v. *Parson*, 127 N. C. 301, 37 S. E. 271; *Bass* v. *Fontleroy*, 11 Tex. 698, ante, VI. In truth, it would appear that he must appeal from that order or he cannot appeal at all, for after he has been excluded from the case by the final action of the court on his application or petition, he is not a party to the action and cannot appeal from a final judgment entered between those who are parties: *People* v. *Pfeiffer*, 59 Cal. 89; *Lorber* v. *Connor*, 82 Iowa, 739, 47 N. W. 1006.

The cases cited point out the distinction between an order denying leave to a third party to intervene in a suit, and a final decree in the suit between the original parties thereto; they also show that such an order is final only as to the potential intervenor and

nobody else; that therefore the order denying leave to the Canneries to intervene (R. 304) is not a final decree in the suit against the Packers, "wherein the United States is complainant;" and is not appealable directly to this Court under the Expediting Act. In the proceeding by which the Canneries moved for leave to intervene, the Canneries was the complainant, and not the United States, as we have already stated, and though the order denying the motion is sufficiently final to support an appeal by the Canneries, it is not final as to anybody else, and, particularly, it is not a final order, judgment, or decree, disposing of the whole anti-trust suit, as required by the Expediting Act.

THE RESPONDENT WAS NOT A PARTY TO THE ANTI-TRUST SUIT WHEREIN THE UNITED STATES IS COMPLAINANT

The Government's contention amounts to this: That Respondent's appeal from the order denying leave to become a party was from a final decree in the suit in equity to which Respondent was not a party. This amounts to the claim that one not a complainant or defendant in a suit can appeal from a final decree in the suit. The error in this position is pointed out in *Voorhees* v. *Indianapolis Car & Mfg. Co., supra.*

It is certainly good law that one who is a stranger and not a party to a suit, cannot appeal from a final decree in such suit. In *Bayard* v. *Lombard*, 9 How. 530, this Court said (551):

> It is a well settled maxim of the law, that "no person can bring a writ of error to reverse a judgment who is not a party or privy to the record." * * * The judgment or order of the court on

> a summary motion, or a collateral question arising like the present on the suggestion of a third party, is not re-examinable on a writ of error issued on the judgment with which it may happen to be connected.

In *Indiana Southern Railroad Company and William H. Guion* v. *Liverpool, London & Globe Insurance Company*, 109 U. S. 168, the Court said (173):

> The petition of Guion was for leave to appeal from a decree in a suit to which he was not a party. We decided in *Ex parte Cutting*, 94 U. S. 14, that such an appeal could not be taken. He had applied for leave to become a party, but this leave was not given. So he is not a party to the decree from which he appeals. * * *

In *Ex parte Cockcroft*, 104 U. S. 578, the petitioner asked this Court for a writ of mandamus requiring a Circuit Court to allow an appeal by him from an order of the court confirming the sale of a railroad. The petitioner was not a party to the suit, nor did it appear that he ever asked to be made a party. He was not the holder of any of the bonds which, by the decree under which the sale was made, were entitled to a distributive share of the proceeds. He was evidently heard as a matter of favor, and not because he had any right to intervene. In denying his petition, this Court said (579):

> Inasmuch, therefore, as the petitioner was not a party to the suit, either by an express order of the court to that effect, or being treated as such, his application for an appeal was properly denied.

> This case cannot be distinguished in principle from that of *Ex parte Cutting*, 94 U. S. 14.

In the case of *In re Leaf Tobacco Board of Trade*, 222 U. S. 578, the petitioner asked for a writ of mandamus to compel the court below to permit him to intervene and appeal. In denying his petition, this Court said (580):

> One who is not a party to a record and judgment is not entitled to appeal therefrom.

It is equally well settled that after one has been permitted to intervene, he becomes a party to the suit, and can appeal from the final decree. *Ex parte Jordan*, 94 U. S. 248; *Williams v. Morgan*, 111 U. S. 684; *Continental Insurance Company v. United States*, 259 U. S. 156 (cited by the Government on page 11 of its brief); *In Re Michigan Central Railroad Company*, 124 Fed. 727 (C. C. A.). In the case last cited, the Court said (730):

> The appeal in this case should have been allowed. It may be that the Michigan Central Railroad Company was not originally a party to the foreclosure suit of the Farmers' Loan & Trust Company against the Detroit & Bay City Railroad Company. That it subsequently became a party by intervention for the purpose of obtaining relief in respect of a part of the purchase price of the railroad sold under the decree in that cause is undeniable. Under that intervention the petitioner made the bond and gave the collateral security out of which has grown the clerk's claim for the compensation adjudged by the decree complained of. The proceeding thus grafted upon the old foreclosure suit constituted a properly related ancillary suit, the parties to which were the peti-

tioner and the Farmers' Loan & Trust Company. In the course of the execution of the orders and decrees made in that intervention the clerk of the court claimed to have been entitled to certain costs and commissions, which he asserted by his own subintervention, and to which he made the petitioner a party. It is therefore not the case of an effort to appeal from a decree by a stranger whose application to intervene had been denied, as in *Ex parte Cutting*, 94 U. S. 14, 24 L. Ed. 49, but the case of one who had become a party for the purpose of the intervention, and who had been treated as such for more than 20 years. In respect of any matter within the scope of the intervention the petitioner had thereby become an actor, with liberty to present its contention and obtain an adjudication, and a consequent right to have whatever was done reviewed by this court if the matter was one in its nature appealable. *Ex parte Jordan*, 94 U. S. 248, 24 L. Ed. 123; *Hamlin v. Toledo, etc., R. Co.*, 78 Fed. 664, 24 C. C. A. 271, 36 L. R. A. 826; *Williams v. Morgan*, 111 U. S. 684, 699, 4 Sup. Ct. 638, 28 L. Ed. 559.

We repeat that the Canneries was a stranger to the suit of the Government against the Packers, and remained such, in that its motion for leave to intervene was denied and not granted. Its case was separate from that of the United States against the Packers. This the Government recognizes by entitling this certiorari proceeding, *The United States of America, Petitioner, vs. California Cooperative Canneries.* There are no parties to it except the United States and the Canneries. It involves nothing but the complaint of the Canneries against the order denying its motion for leave to intervene. Only one party to the anti-trust suit is a party to this proceeding, namely, the United States.

With respect to *Continental Insurance Company v. United States*, 239 U. S. 156, which the Government cites in support of its contention that a direct appeal to this Court would lie, under the Expediting Act, from the order denying the Canneries motion for leave to intervene, the Government fails to note that in that case the interventions were granted, that the intervenors thereby became parties to and actors in the suit with the same right of appeal as any other party thereto, and that the merits of their claims were adjudicated by the final decree of the court. Here, however, the Canneries motion for leave to intervene was denied, it never became a party to the suit, and the merits of its claims were not adjudicated. The case of *Continental Insurance Company v. United States* is therefore the exact contrary of the Canneries case. If, in that case, the motions for leave to intervene had been denied, and the potential intervenors had taken direct appeals to this Court, under the Expediting Act, from the orders denying leave to intervene, a totally different question would have been presented.

THE FINAL DECREE APPEALABLE TO THIS COURT UNDER THE EXPEDITING ACT MUST DISPOSE OF THE MERITS OF THE CASE WHEREIN THE UNITED STATES IS COMPLAINANT

A direct appeal to this court, under the Expediting Act, is governed by a statute radically different in its provisions from that controlling appeals from the Supreme Court of the District of Columbia to the Court of Appeals of the District of Columbia. A final order, judgment, or decree, to be covered by the Expediting

Act, must be such as is defined in *Arnold* v. *United States*, 263 U. S. 427, 434, as follows:

> It is well settled that a case may not be brought here by writ of error or appeal in fragments; that to be reviewable a judgment or decree must be not only final, but complete, that is, final not only as to the parties, but as to the whole subject-matter and as to all the causes of action involved; and that if the judgment or decree be not thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction. *Hohorst* v. *Packet Co.*, 148 U. S. 262, 264; *Collins* v. *Miller*, 252 U. S. 364, 370; *Oneida Navigation Corporation* v. *Job*, 262 U. S. 521, 522; and cases therein cited.

It is and has been the policy of Congress to relieve this Court as much as possible, by restricting its appellate jurisdiction, and it is therefore inconceivable that the Expediting Act was intended to give direct appeals as matter of right from every order or decree. The Expediting Act means exactly what it says, when it expressly confines its scope to the decrees finally disposing of the suits. As said by the three Judges in *Southern Pacific Terminal Company* v. *Interstate Commerce Commission*, 166 Fed. 134, 135-136, the Expediting Act, fairly construed, permits the case to proceed in the usual way (except it is to be given precedence and expedited) until final hearing, when it is to be set down before three Circuit Judges, and after the final decree, it may be carried within sixty days by appeal to the Supreme Court by either party, and that "to apply it to all proceedings in the case is, in the nature of things, to defeat the very object of the Act, and change it from an expediting act into a hindering and delaying act."

In *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 215 U. S. 216, this Court held that the provisions of the Expediting Act do not authorize the trial Court to send up the whole case to this Court, and further held that this Court will not consider a case "in which no final judgment or decree or order determinative of the merits was rendered." Certainly, the order of the Supreme Court of the District of Columbia, denying the Canneries leave to intervene, was not only not determinative of the merits of the case of the Government against the Packers, but in no way affected the final decree.

The Government cites no case in which an unsuccessful applicant for leave to intervene took a direct appeal to this Court under the Expediting Act, and we have not been able to find any such case in which this Court sustained the right to maintain such a direct appeal. Owing to the vast and complicated interests involved in anti-trust suits, and the many parties concerned therein, applications for leave to intervene are numerous. Some have been granted and some have been denied. If a direct appeal lies as of right to this Court from every order denying leave to intervene, it is strange that we can find no case in the books in which this Court sustained the right to take and maintain such an appeal.

The Expediting Act itself affords a conclusive answer to the Government's contentions without considering the decisions showing the nature of the final decrees which have been reviewed on direct appeals under the Expediting Act. The question of statutory construction can best be adduced by reference to the provisions of the Expediting Act itself (*Rudolph* v. *Potomac Electric Power Company*, 24 Fed. (2d) 882).

The Expediting Act applies only to final decrees on the merits of the whole case, and to such final supplemental or subsequent decrees that directly affect the merits of the original final decrees. The statute contemplates only final decrees on the merits in the strict technical sense of the term. An order denying leave to intervene decides nothing either on the merits of the case or on the merits of the petition for intervention, but merely shuts or opens the doors of the Court to a hearing on the merits as set up in the intervening petition. Until allowed to intervene, the applicant is a mere stranger to the suit, and for this reason the Canneries could not have taken a direct appeal to this Court from the order denying intervention, and such an appeal, if taken, would have been dismissed for want of jurisdiction. There could not be any final decree on the merits of the intervening petition, unless and until the Canneries was allowed to intervene, and until such a final decree on the merits was entered, it could not be determined whether it was within or without the Expediting Act. Only parties to anti-trust suits, and not strangers, can take direct appeals to this Court under the Expediting Act. Until a stranger secures a standing, he cannot be heard on the question of jurisdiction or any other matter (see *Keatley* v. *Furey*, 226 U. S. 399, 403).

Recurring to the case of *Continental Insurance Company* v. *United States*, 259 U. S. 156: That was a suit instituted by the Government under the anti-trust acts. In the District Court, certain minority stockholders were permitted to intervene. The final decree entered in that case adjudicated the rights of

the interveners, and it was not appealed by the Government or by the defendants, but was appealed by the interveners. The final decree which was entered in the District Court, and from which the interveners prosecuted their appeal, was entered upon a prior mandate of this Court. Upon the appeal thus prosecuted by the interveners, and which, we repeat, involved the merits of the final decree in an anti-trust suit, this Court, in the case cited, reviewed the decree.

In re Leaf Tobacco Board of Trade, 222 U. S. 578, the petitioner asked a writ of mandamus to compel the court below to permit him to intervene in the anti-trust suit of *United States* v. *American Tobacco Co.*, 221 U. S. 106. In denying his petition, this Court said (580):

> The action of the court below in refusing to permit the movers to become parties to the record is not susceptible of being reviewed by this court *on appeal*, or indirectly, under the circumstances here disclosed, by the writ of mandamus. *Ex parte Cutting*, 94 U. S. 15, 24 L. Ed. 49; and see *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 44 L. Ed. 782, 20 Sup. Ct. Rep. 636.

In 3 C. J. 477-478, it is said:

> In the absence of special statutory provision an interlocutory or discretionary order or decree permitting or refusing to permit intervention in the cause is not appealable. Such orders, however, are appealable in some states under statutes allowing appeals from interlocutory orders or decrees involving the merits of the action or some part thereof, or other special provisions of the statute covering such cases. And it is generally held that the final denial or overruling of a peti-

> tion or application to intervene is a final judgment or order so far as the petitioner or applicant is concerned, and therefore subject to appeal or writ of error by him, unless it is within the discretion of the court, so as to come within the rule precluding an appeal or writ of error to review a discretionary order or decree.

In *Keatley* v. *Furey*, 226 U. S. 399, an intervening petition was dismissed on its merits, and the petitioner appealed directly to this Court. In dismissing the appeal, this Court said (404):

> Right or wrong, that was the decision of the circuit court, and it is obvious that a dismissal of the petition on that ground does not warrant a direct appeal, whether the court had jurisdiction or not. The court had jurisdiction over the intervention and decided against it on the merits. That question logically and chronologically preceded any question of jurisdiction in the principal case. The question of jurisdiction in the principal case was not yet open, as there had been no final decree therein, and as, by virtue of the decision that the intervener had no standing, the question could not be raised by him. * * *

The recent decision of this Court (*Swift & Company* v. *United States*, 276 U. S. 311) on the Packers appeal from the order of the Supreme Court of the District of Columbia denying their motions to vacate the final consent decree of February 27, 1920, is not in point here. Those motions were made by original parties to and in the anti-trust suit, and sought to put an end to the final decree and the whole case. This Court held that such motions came within the clause of the decree (R. 129) retaining jurisdiction to entertain any applications by the parties in respect to the decree.

The sole question presented to this Court is the jurisdiction of the Court of Appeals of the District of Columbia over the Canneries appeal. In its brief, the Government refers to certain orders entered by the Supreme Court of the District of Columbia *subsequent* to the mandate (R. 315-317) of the Court of Appeals, but as any questions concerning such orders are not properly before this Court, we do not discuss them in this brief.

CONCLUSION

We therefore respectfully submit, (1) that the Court of Appeals of the District of Columbia had jurisdiction of the Canneries' appeal from the order of May 8, 1923; (2) that the Court of Appeals was right in denying the Government's motion to vacate; (3) that the writ of certiorari should be dismissed as improvidently granted; or (4) that the order of the Court of Appeals denying the Government's motion to vacate should be affirmed.

FRANK J. HOGAN,
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Washington, D. C.,
February 25, 1929.

FILED
APR 18 1929

No. 575

In the Supreme Court of the United States

OCTOBER TERM, 1928

UNITED STATES OF AMERICA, *Petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

RESPONDENT'S MEMORANDUM REPLY TO BRIEF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION.

FRANK J. HOGAN,
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Washington, D. C.,
April 10, 1929.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

In the
Supreme Court of the United States

OCTOBER TERM, 1928

No. 375

UNITED STATES OF AMERICA, *Petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES

RESPONDENT'S MEMORANDUM REPLY TO BRIEF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION.

In so far as the Grocers' brief ties to the single question presented in this proceeding, it is pertinent, but in so far as it strays from the record, and seeks to incorporate, by quotations, matters extraneous, it is not helpful.

The Grocers say that two questions are presented, namely, (1) technical, and (2) practical. But one question is presented, and that is the technical question of law. There is no practical question before this

Court. The only question for decision relates to the jurisdiction of the Court of Appeals of the District of Columbia over the Canneries appeal from the order of the trial court denying leave to intervene. The Grocers are at pains to inject into this record the so-called suspending order, by quoting it in their brief, and by reference to the record in another case which was before this Court. The so-called suspending order does not appear in this record, and was properly omitted. That order was not entered until about one year after the Court of Appeals had finally disposed of the Canneries appeal. The order was that of the trial court, and not of the Court of Appeals.

The jurisdiction of the Court of Appeals certainly cannot be tested by some order passed by the trial court long after the Court of Appeals had disposed of the matter. The so-called suspending order is not, therefore, before this Court for any proper purpose whatsoever.

The Grocers assertion that the Canneries is the only party interested in the so-called suspending order, entirely overlooks the numerous defendants to the bill in the main cause, all of whom were and are very vitally concerned in and affected by it.

Continental Insurance Company v. United States, 259 U. S. 156, cited by the Grocers, is sufficiently considered on pages 18, 20, and 23 of our brief.

Terminal Railroad Association v. United States, 266 U. S. 17, also cited by the Grocers, is not in point. That case involved a direct question as to the scope of a final decree in an anti-trust suit. It presented a final adjudication in contempt. The District Court held that the acts of the alleged contemptors violated the decree as construed by that Court, but this Court con-

strued the decree otherwise, and reversed the contempt adjudication. Such adjudication was final. *Cogen v. United States*, 278 U. S. 221.

The Grocers also cite *Interstate Commerce Commission v. Baird*, 194 U. S. 25, but their quotation from that opinion clearly shows that it is not in point on the single question involved in this proceeding.

The suggestion of the Grocers and the Government that the Canneries' contract expired January 1, 1929, is immaterial. The contract was in force when the Court of Appeals entertained the appeal of the Canneries, and the question is to be considered as of that time and not of this. The only parties to this proceeding are the United States and the Canneries. If we pass beyond the single question involved, then all of the defendants to the main suit are entitled to be heard. In addition, the jurisdiction of the Court of Appeals does not depend upon the existence or non-existence of a private contract. The question presented is one of jurisdiction and not of power.

Respectfully submitted,

FRANK J. HOGAN,
NELSON T. HARTSON,
Counsel for Respondent.

Washington, D. C.,
April 10, 1929.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 375.

UNITED STATES OF AMERICA,
Petitioner.

against

CALIFORNIA CO-OPERATIVE CANNERIES.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF IN BEHALF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES, INTERVENER.

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Supreme Court of the United States

OCTOBER TERM, 1928.

No. 375.

UNITED STATES OF AMERICA,
Petitioner,

against

CALIFORNIA CO-OPERATIVE CANNERIES.

BRIEF IN BEHALF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES, INTERVENER.

Intervener's Status.

By an order of the Supreme Court of the District of Columbia dated November 5, 1921, National Wholesale Grocers' Association of the United States was granted leave to intervene in this suit for the purpose of being "heard in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree" (R. 145). Since that time this intervener has actively cooperated in the Government's efforts to sustain said decree and to restore it to effective operation.

Technical and Practical Questions Presented.

On March 19, 1928, this court decided that the Packers' Consent Decree was valid and binding, and that the Court of Appeals of the District of Columbia had no jurisdiction of an appeal from a decree of the District Supreme Court denying a motion by the Armour and Swift defendants to vacate said consent decree (*Swift & Co.* v. *United States*, 276 U. S. 311).

The technical question now before the Court is: Did the Court of Appeals of the District of Columbia have jurisdiction of an appeal from a decree of the District Supreme Court, entered in the same suit, denying the application of California Co-operative Canneries, a stranger to the suit, for leave to intervene for the purpose of moving to vacate said consent decree?

The practical question is how most expeditiously to restore operative effect to the consent decree, which this court has held to be valid, and which stands out as the one real accomplishment of the Government in its forty years of effort to compel the Packers to comply with the Anti-Trust Law.

Connection of California Co-operative Canneries With Suit.

The only party openly resisting the attempt of the Government to reanimate the consent decree is the intervener, California Co-operative Canneries (hereinafter called the Canneries), whose only interest in the suit arose from a contract with Armour & Company which, by its terms, *expired on January 1, 1929* (R. 152).

In its intervening petition (R. 146-218) the Canneries set out said contract (R. 148-152) which contained the following provision (R. 151):

> "In case governmental action materially interferes with the performance of this contract by second party [Armour & Co.], then and in that case it shall have the right to cancel and terminate this agreement by giving sixty days' written notice to first party of its intention so to do, and shall not be held liable for any loss resulting therefrom."

The intervening petition alleged that after the entry of the consent decree Armour & Company notified the Canneries "that the said contract must be considered as cancelled" (R. 186).

The consent decree was entered on February 27, 1920 (R. 118) and in the following May the Canneries first appeared on the scene, asking the Congressional Committees then considering the Packer and Stock Yards Act to nullify the decree (Hearings on Meat Packer Legislation, Series D, Part I, p. 105), and then applied to the Attorney General to move to have the decree vacated or modified. After public hearings the Attorney General on February 7, 1922, denied this application (Packers Consent Decree Hearings before Sub-Committee of the Committee on Agriculture and Forestry, U. S. Senate, 67th Congress, March 23 and April 21, 1922).

Thereupon, on April 19, 1922 (R. 147) the Canneries filed its aforesaid petition in the Supreme Court of the District of Columbia asking leave to intervene for the purpose of moving to vacate the consent decree in its entirety or to modify it so as to allow the packers either to resume their

dealings in the "unrelated lines" or to use their distribution facilities for moving same (R. 218).

On May 8, 1923, the District Supreme Court entered a decree denying the application of the Canneries for leave to intervene (R. 304) and the Canneries, instead of appealing direct to this Court under the Expediting Act, took an appeal to the District Court of Appeals (R. 305). That court assumed jurisdiction, reversed the decree appealed from, and directed that the court below allow the Canneries to intervene and that "such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition" (R. 315).

In its opinion the Court of Appeals said (R. 314):

> "When an equity court, in the exercise of its jurisdiction, makes a decree which, in determining the rights of the parties, enjoins one of them from carrying out a lawful contract with persons not parties to the suit, and gives effect to a cancellation clause of such contract, it is the duty of the court, if it retains jurisdiction of the case, as in this instance, to permit the intervention of the contracting party, who is not a party to the original suit and who is detrimentally affected by the decree, and to give him an opportunity to be heard. As we have observed, without intervention appellant would be left remediless. Valuable contract rights have been stricken down without notice to appellant or an opportunity to be heard. It is a fundamental principle of our jurisprudence that before private rights may be affected by judicial decree the party in interest must have due notice and an opportunity to be heard. Upon the strict observance of this principle rests the security of the citizen in the enjoyment of life, liberty, and property; otherwise these rights could be divested without due process of law."

The obvious fallacy in that statement lies in the assumption that the consent decree was an *adjudication* by the court, whereas it was merely an *agreement* of the parties under the sanction of the court (*Hodgson* v. *Vroom*, 266 Fed. 267, 268; C. C. A., 2d Circ.). The "due process of law" provisions of the Fifth and Fourteenth Amendments are not applicable to contracts (*Corrigan* v. *Buckley*, 271 U. S. 323).

Suspension of Consent Decree and Subsequent Proceedings.

Pursuant to the mandate of the Court of Appeals, the District Supreme Court allowed the Canneries to intervene and thereafter motions to vacate the consent decree were filed by said intervener and by the Armour and Swift defendants. Upon the motion papers and without any hearing of any of the issues raised by the intervening petition of the Canneries, the court, on May 1, 1925, entered the following order (Transcript of Record in *Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, pp. 313, 318, 322, 341):

> "This cause came on to be further heard at this term of court on the motions of the Swift and Armour groups of defendants to vacate and set aside and declare void the decree of February 27, 1920, entered herein, and also upon the motion of the intervener, California Cooperative Canneries, to vacate or modify the decree or suspend its operation; and after argument by counsel for the respective parties in interest and consideration by the Court it is thereupon, this 1st day of May, 1925, hereby—
>
> Adjudged, ordered and decreed as follows:

1. The said motion of the Swift and Armour groups of defendants are overruled;

2. The said motion of the California Cooperative Canneries to suspend the operation of the said decree of February 27, 1920, is granted and the operation of the said decree as a whole is suspended until further order of the Court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceedings.

By the Court:

JENNINGS BAILEY,
Justice."

Appeals from the part of the order suspending the consent decree were taken to the District Court of Appeals by the Government and National Wholesale Grocers' Association, but were dismissed on motion of the Canneries on technical grounds without consideration of the merits. The Swift and Armour defendants also appealed to that court from the denial of their motions to vacate the consent decree and all of the defendants, *including the Canneries*, waived citation (Transcript in No. 181, Oct. Term, 1927, p. 350). One of the errors assigned by the Swift and Armour appellants was as follows (*id.*, p. 360):

"7. The court erred in entering its order suspending the consent decree because it thereby materially modified said consent decree without the consent of these defendants."

The District Court of Appeals, having first dismissed the Armour-Swift appeal on the ground that it had no jurisdiction thereof (*id.*, p. 372), allowed a reargument and thereafter certified to this court five questions relating to its own jurisdiction and that of the District Supreme Court

(*id.*, pp. 381-3). After hearing argument this court ordered the entire record sent up, but in its final decision did not pass upon the propriety of that part of the order appealed from which suspended the consent decree on the motion of the Canneries.

That decision having left the consent decree in a state of suspended animation, the Government sought to revive it by applying to the District Court of Appeals for a vacation of its former decree allowing the Canneries to intervene, on the ground that, by virtue of the Expediting Act, that court had no jurisdiction of the appeal on which said decree was rendered. The denial of that relief is now before this court for review on certiorari.

The remarkable picture is presented of an intervener, whose only interest in the suit has ceased to exist, contending in effect that the consent decree which this court has declared to be valid must be left suspended, and that, because of a technical snarl in the District of Columbia courts, this court is impotent to restore to operative effect one of the most important decrees ever secured by the Government in an Anti-Trust case.

POINTS.

I.

Under the Expediting Act the appeal of the Canneries from the decree denying its motion for leave to intervene lay "only to the Supreme Court", and, as the Court of Appeals of the District of Columbia had no jurisdiction of that appeal, its decree therein was null and void.

In *Swift & Co.* v. *United States*, 276 U. S. 311, 322-3, this court said (italics ours):

> "Swift and Armour answer that the motions to vacate the consent decree are not subject to the provisions of the Expediting Act because they are not a part of the suit filed February 27, 1920, under the Anti-Trust Act, but constitute a new suit. Compare *Stevirmac Oil & Gas Co.* v. *Dittman*, 245 U. S. 210. The argument is that the original suit ended with the entry of the consent decree, or at all events, at the expiration of the term, or at the end of the 60 days from the entry of the decree allowed by the Expediting Act for an appeal. We need not inquire whether an independent suit to set aside a decree entered under the Anti-Trust Act is subject to the provisions of the Expediting Act. The consent decree provided by paragraph Eighteenth for 'entertaining at any time hereafter any application which the parties may make with respect to this decree.' Swift and Armour made these motions to vacate in the original suit; *they arose out of the three proceedings for intervention filed after entry of the consent decree; and they were entitled in the original cause. The Court of Appeals of the District was, therefore, without jurisdiction to entertain the appeals.*"

No reason is perceived why that language does not apply to the appeal taken by the Canneries from the decree denying its application for leave to intervene for the purpose of attacking the consent decree. It is true that the motions in the one case were made by original parties and in the other by a would-be intervener. But in *Continental Co.* v. *United States*, 259 U. S. 157, 164, it appears that the appeals direct from the District Court to this court under the Expediting Act were taken by *interveners*. There is no great difference in principle between a denial of a motion to vacate and a denial of leave to intervene *for the purpose of moving to vacate*.

In *Terminal R. R. Assoc.* v. *United States*, 266 U. S. 17, an appeal was taken direct to this court from an order of a United States District Court adjudging the appellants guilty of contempt, committed by disobeying a decree which had been rendered against them and in favor of the United States in a suit under the Anti-Trust Laws. The contempt proceeding was brought, not by the Government, but by certain of the defendants for the purpose of enforcing rights granted them by the original decree. The Government did not join in the complaint or participate in the hearing in the District Court, but subsequently appeared and aligned itself with the appellees. At page 28 this court said:

> "The Expedition Act gives the right of appeal in this case, and the appeal was properly allowed by a justice of this court."

Obviously, if there was a "right of appeal" to this court given by the act, no other court could have had appellate jurisdiction, for the act expressly provides that the appeal "will lie *only* to the Supreme Court".

In *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, an appeal from an order of a Circuit Court, dismissing a petition of the Interstate Commerce Commission to obtain orders requiring the testimony of witnesses and the production of books and documents, was taken direct to this court under the act of February 19, 1903 (U. S. Code, title 49, §§43, 44, 45), which provided that the Expediting Act should "apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission". This court, holding that the appeal was properly taken, said at pp. 38-39 (italics ours):

> "The present proceeding is not merely advisory to the commission, but, as was said in *Interstate Commerce Commission* v. *Brimson*, *supra* [154 U. S. 447], a judgment rendered will be a final and indisputable basis of action as between the commission and the defendant, and furnish a basis for similar cases. While it has for its object the obtaining of testimony in aid of proceedings before the commission, it is evident that important questions may be involved touching the power of the commission and the constitutional rights and privileges of citizens. Congress deemed it imperative that such cases, affecting the commerce of the country as well as personal rights, should be promptly determined in a court of last resort. * * * *We think it was the purpose of the act to eliminate an appeal to the Circuit Court of Appeals and to permit the litigation to be shortened by a direct appeal to this court.*"

The fact that nine years after its entry the Packers Consent Decree is inoperative, thanks to the untiring efforts of the Canneries, sufficiently indicates the importance of disposing promptly of the claims of a stranger who seeks

to intervene for the purpose of attacking a consent decree secured by the Government in an Anti-Trust case.

II.

The decree of the District Court of Appeals refusing to vacate its previous decree, by virtue of which the Canneries was enabled to intervene and secure the suspension of the consent decree, should be reversed, and the previous decree should be declared void and of no effect.

Dated February 15, 1929.

Respectfully submitted,

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